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**OFFICE OF PETITIONS**

In re Application of Berglund et al. :  
Application No. 10/519,711 :  
Filing Date: December 12, 2005 :  
Attorney Docket No. 47113-0538 :

Decision on Petition

This is a decision on the petition under 37 CFR 1.181, filed July 9, 2008, to withdraw the holding of abandonment.

The petition is **granted**.

The Office mailed a non-final Office action on November 20, 2007. The Office action set a three-month shortened statutory period for reply.

A reply to the November 20, 2007, was not matched with the file. As a result, a Notice of Abandonment was mailed June 18, 2008.

Petitioner asserts a reply to the non-final Office action was timely filed on January 29, 2008. In support of the petition, petitioner has submitted a date-stamped postcard receipt, indicating the following items were received on January 29, 2008,

- (1) Amendment transmittal sheet,
- (2) Amendment,
- (3) A copy of a priority document,
- (4) A request for corrected filed receipt, and
- (5) A copy of the filing receipt mailed by the Office on January 25, 2006.

The original reply filed January 29, 2008, was not matched with the file and cannot be located. However, M.P.E.P. 503 states, “[a] postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.” Accordingly, it is concluded that a reply was timely filed in the Patent and Trademark Office but not matched with the application file.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Unfortunately, the copy of the request for a corrected filing receipt and the copy of the original filing receipt filed with the petition cannot be located. Therefore, the Office requests petitioner file a new copy of the request for a corrected filing receipt.

The petition requests assurance the improper holding of abandonment will not negatively affect the term of any patent issuing based on the application. Petitioner may wish to note, per 37 CFR 1.704(c)(4), the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date two months from the mailing date of a notice of abandonment and ending on the date a petition to withdraw the holding of abandonment or to revive the application is filed. In this case, the petition was filed within two months of the mailing date of the Notice of Abandonment. Therefore, absent a change in the law, a reduction in patent term pursuant to 37 CFR 1.704(c)(4) would be inappropriate. If petitioner disagrees with any patent term adjustment on the Notice of Allowance, a petition should be filed at that time.

Technology Center Art Unit 1793 will be informed of the instant decision and the application, including the papers filed July 9, 2008.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley  
Senior Petitions Attorney  
Office of Petitions